

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,	)	
	)	3:12-CR-00022-LRH-VPC
Plaintiff,	)	
	)	
v.	)	<u>ORDER</u>
	)	
SCOTT H. SUMMERHAYS,	)	
	)	
Defendant.	)	
_____	)	

Before the Court is Defendant Scott H. Summerhays' ("Summerhays") Motion to Withdraw Plea. Doc. #130.<sup>1</sup> The United States filed an Opposition (Doc. #139), to which Summerhays replied (Doc. #142).

On February 22, 2012, Summerhays was indicted on twenty-four counts of violations of the United States Code, including counts of wire fraud, money laundering, identity theft, and aggravated identity theft. Doc. #1. On April 11, 2012, the Court appointed an assistant federal public defender to represent Summerhays. Doc. #9. The Court granted the assistant federal public defender's motion to withdraw as counsel on December 18, 2012. Doc. #33. The Court appointed an experienced attorney from the CJA panel to represent Summerhays on January 8, 2013 (Doc. #34), and granted her motion to withdraw as counsel on August 8, 2013 (Doc. #63). The Court appointed another experienced attorney from the CJA panel on September 5, 2013. Doc. #68. On

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<sup>1</sup> Refers to the Court's docket number.

1 October 7, 2013, Summerhays moved to proceed in pro per. Doc. #72. The Court granted  
2 Summerhays' motion on October 28, 2013, and appointed Summerhays' CJA attorney to serve as  
3 stand-by counsel at trial. Doc. #79. Trial commenced on February 11, 2014, the government  
4 counsel gave his opening statement and four witnesses testified. On the second day of trial,  
5 Summerhays pleaded guilty to all twenty-four counts of the indictment following an extensive plea  
6 canvass by the Court. Doc. #118. The Court referred the matter to the Probation Department for a  
7 pre-sentence investigation report, and set sentencing for May 29, 2014. *Id.* The pre-sentence report  
8 and sentence recommendation was issued on April 25, 2014. After two extended continuances of  
9 sentencing at Summerhays' request, on October 14, 2014, he moved to withdraw his guilty plea on  
10 three primary grounds: (1) he was not provided competent assistance of counsel; (2) the Court was  
11 prejudiced against him; and (3) he is innocent. Doc. #130.

12 A defendant can withdraw a guilty plea after it has been accepted by the court if "the  
13 defendant can show a fair and just reason for requesting the withdrawal." Fed. R. Civ. P.  
14 11(d)(2)(B). "While withdrawal of a plea before sentencing is freely granted when there is a 'fair  
15 and just' reason for withdrawal, . . . the burden of showing such a reason rests with the defendant."  
16 *United States v. Read*, 778 F.2d 1437, 1440 (9th Cir. 1985). "Fair and just reasons for withdrawal  
17 include inadequate Rule 11 plea colloquies, newly discovered evidence, intervening circumstances,  
18 or any other reason for withdrawing the plea that did not exist when the defendant entered his  
19 plea." *United States v. Ortega-Ascanio*, 376 F.3d 879, 883 (9th Cir. 2004). It is not a "fair and  
20 just" explanation that a defendant merely changed his mind about pleading guilty, and a defendant  
21 "may not withdraw his guilty plea 'simply on a lark.'" *United States v. Ensminger*, 567 F.3d 587,  
22 590 (9th Cir. 2009) (quoting *United States v. Hyde*, 520 U.S. 670, 676-77 (1997)); *United States v.*  
23 *Rios-Ortiz*, 830 F.2d 1067, 1070 (9th Cir. 1987).

24 First, Summerhays claims that withdrawal of his guilty pleas would be fair and just because  
25 he was never provided competent assistance of counsel. The facts do not support this claim. After  
26 being represented by the three different defense counsel over one and one half years, Summerhays

1 told the Court on October 7, 2013, “I want to be in charge of my own case. No one knows my case  
2 like I do,” and requested that his CJA attorney be appointed as stand-by counsel. Doc. #139, Ex. 1  
3 at 3:18-20. The Court informed Summerhays of the many risks associated with his request to  
4 represent himself at trial, and stated that in this case, the Court believed that Summerhays’ decision  
5 to represent himself was a mistake. *See id.* at 25:11-12. Despite these warnings, and following a  
6 lengthy canvass by the Court, Summerhays waived his right to counsel at trial, and accepted the  
7 CJA attorney as stand-by counsel. *Id.* at 29:5-7. Prior to deciding to represent himself,  
8 Summerhays had been provided representation by three separate attorneys, all of whom were  
9 competent and capable of representing and assisting him at trial. Extensive investigative services  
10 were also authorized and expended in the course of the counsels’ representation of Summerhays.  
11 Notwithstanding this, Summerhays maintained his intention to proceed in pro per, despite  
12 knowledge of the risks of self-representation. Based on the facts before the Court, Summerhays has  
13 not met his burden to establish that his belief that he was not provided effective assistance of  
14 counsel is a “fair and just” reason to withdraw his plea.<sup>2</sup> The fact is that Summerhays knowingly  
15 and voluntarily elected to proceed to trial without counsel.

16 Second, Summerhays argues that the Court “has a conflict of interest, and has shown  
17 extreme prejudice against the defendant.” Doc. #130 at 10. Summerhays refers to the fact that the  
18 Court declined to grant a continuance to Summerhays the day before trial, supposedly in an effort  
19 to accommodate the prosecutor’s retirement schedule. However, the Court granted six prior trial  
20 continuances on behalf of Summerhays. Moreover, on October 28, 2013, the same day that  
21 Summerhays waived his right to counsel, Summerhays acknowledged that he would not be granted  
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24 <sup>2</sup> Summerhays argues further that his negative treatment of his stand-by counsel created a “conflict of  
25 interest” whereby his stand-by counsel provided ineffective assistance due to his bias against Summerhays.  
26 Doc. #130 at 5. The Court finds that this allegation does not meet Summerhays’ burden to show a “fair and  
just” reason to withdraw his plea. Summerhays also fails to meet his burden with respect to his claim that he  
was not able to get in touch with witnesses to support his defense, because this was precisely one of the risks  
about which the Court informed Summerhays while advising him not to waive his right to counsel.

1 further continuances, and that the trial would begin as scheduled on February 11, 2014. Doc. #139,  
2 Ex. 1 at 31:14-23. Summerhays has not met his burden to show that the Court is biased against  
3 him, or that this supposed bias constitutes a “fair and just” reason to withdraw his plea.

4 Third, Summerhays contends that the most important reason that it would be “fair and just”  
5 for the Court to permit withdrawal of his plea is that he is innocent. Doc. #130 at 11. This  
6 argument is contradicted by the factual admissions made under oath by Summerhays. Importantly,  
7 Summerhays entered his guilty pleas on the second day of his trial, after having heard the  
8 prosecutor’s opening statement and the testimony of four significant government witnesses. As  
9 part of the Court’s extensive plea canvass, during which Summerhays was under oath, the  
10 prosecutor outlined at length the evidence and witnesses that the government planned to present at  
11 trial. The Court expressly referred to the prosecutor’s outline of his case and the testimony of the  
12 witnesses who had already testified, and asked whether Summerhays strongly disagreed with any of  
13 the existing or proposed evidence. Summerhays responded “No, sir.” Doc. #139, Ex. 2 at 9:6-16.  
14 During the plea canvass, the Court also presented a detailed summary of the conduct allegedly  
15 committed by Summerhays that had been prepared by the government as part of an earlier plea  
16 memo. After each account describing Summerhays’ alleged wrongdoing, the Court asked  
17 Summerhays whether it was an accurate representation of his actions. Each time, Summerhays  
18 responded that the accounts accurately described his conduct and the evidence which he expected  
19 would be presented. *See id.* at 10:8-18:6. The Court then went through the twenty-four count  
20 indictment count-by-count, identifying the specifics of many of the counts. Without equivocation,  
21 Summerhays verified the accuracy of his conduct in many of the counts, disagreeing with none of  
22 them, and entered guilty pleas to each of the twenty-four counts. *See id.* at 20:13-25:10.

23 Following the Court’s lengthy canvass and Summerhays’ pleas, the Court asked the  
24 following question: “Are you pleading guilty to each of these 24 charges against you because, in  
25 truth and in fact, you are guilty of each one of them and for no other reason?” *Id.* at 25:11-13.  
26 Summerhays responded “Yes, sir.” *Id.* at 25:14. With that, the Court accepted Summerhays’ guilty


1 pleas, found him guilty on each of the twenty-four counts, and made related findings supporting  
2 acceptance of the pleas.

3 Summerhays has not identified “newly discovered evidence, intervening circumstances, or  
4 any other reason for withdrawing the plea that did not exist when the defendant entered his plea.”  
5 *Ortega-Ascanio*, 376 F.3d at 883. Moreover, “[s]tatements made by a defendant during a guilty  
6 plea hearing carry a strong presumption of veracity in subsequent proceedings attacking the plea.”  
7 *United States v. Ross*, 511 F.3d 1233, 1236 (9th Cir. 2008). Again, Summerhays has not met his  
8 burden to establish a “fair and just” reason to withdraw his plea because no evidence indicates that  
9 his guilty pleas were not knowing and voluntary.

10 IT IS THEREFORE ORDERED that Summerhays’ Motion to Withdraw Plea (Doc. #130)  
11 is DENIED.

12 IT IS SO ORDERED.

13 DATED this 25th day of February, 2015.

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16 LARRY R. HICKS  
17 UNITED STATES DISTRICT JUDGE  
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